UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2001/86
5 February 2001

ENGLISH
Original: FRENCH

COMMISSION ON HUMAN RIGHTS
Fifty-seventh session
Item 16 of the provisional agenda

REPORT OF THE SUB-COMMISSION ON THE PROMOTION AND PROTECTION OF HUMAN RIGHTS

Report of Mrs. Iulia-Antoanella Motoc, Chairperson of the Sub-Commission at its fifty-second session, submitted in accordance with Commission decision 2000/106

Introduction

1. In its resolution 2000/83 of 26 April 2000, entitled "Work of the Sub-Commission on the Promotion and Protection of Human Rights", the Commission on Human Rights reaffirmed its recognition of the valuable contribution made by the Sub-Commission to the human rights work of the United Nations over the past 53 years and took note of the notes by the Chairperson of the Sub-Commission on enhancing the effectiveness of the Sub-Commission (E/CN.4/Sub.2/1998/38) and on the common position of the Sub-Commission on future tasks, length of sessions, working methods, composition and election of members (E/CN.4/Sub.2/1999/47), of the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission (E/CN.4/2000/112), in particular paragraphs 42 to 56, as well as of the statement made on 22 March 2000 by the Chairperson of the fifty-sixth session of the Commission under item 3 of its agenda.

2. In the same resolution, the Commission reaffirmed the need for clarification and adjustment of the mandate of the Sub-Commission as outlined in the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission. In accordance with the working group's recommendation, the Sub-Commission should continue to be able to debate country situations not being dealt with in the Commission.

It should also be allowed to discuss urgent matters involving serious violations of human rights in any country. However, the Sub-Commission should not adopt country-specific resolutions; its discussions would be reflected in the summary records of the debate which should continue to be forwarded to the Commission. The Working Group recommended that the Sub-Commission should refrain from negotiating and adopting thematic resolutions which contained references to specific countries.

3. The concern to safeguard the Sub-Commission's independence was a predominant theme in the Working Group's discussions. In its decision 2000/109 of 26 April 2000, the Commission emphasized that the independence of members was a defining characteristic of the Sub-Commission; to the extent that there was any perception that its independence was eroded, the credibility of the Sub-Commission and hence the influence that it could bring to bear on human rights issues was weakened.

4. In its decision 2000/109, the Commission endorsed the Working Group's recommendation that members of the Sub-Commission should continue to be elected according to the procedures currently in place. In the view of the Working Group, election of members was more transparent and democratic than appointment. Persons putting their candidacies to the Sub-Commission forward for membership and Governments in electing the membership should be conscious of the strong concern to ensure that the body was independent and was seen to be so. Members of the Sub-Commission should maintain the highest integrity and impartiality and avoid acts which would affect confidence in their independence. As regard the duration of membership, account should be taken of the need for a balanced accommodation of the benefits of continuity and the importance of renewal. As with the principle of independence discussed above, the Commission had emphasized that this should be borne in mind by persons putting their candidacies forward and by Governments in electing the membership. To ensure effectiveness, the size of the Sub-Commission should be kept to the minimum necessary. However, the Sub-Commission should have sufficient members to ensure that is was both geographically representative and also representative of different legal systems; there must also be a sufficient pool of experts to staff the Sub-Commission's working groups. Having weighed the various considerations, the Working Group recommended that the Sub-Commission should remain at its present size of 26 members.

5. In the same decision the Commission considered that its oversight and determination of priorities of the Sub-Commission should be strengthened. In assigning projects, the Commission should ensure that it gave clear direction to the Sub-Commission, taking care to avoid duplication with the work being carried out by other competent bodies and mechanisms.

6. The principal attention of the Sub-Commission should be given to the elaboration of studies and research and to providing expert advice to the Commission at its request. The Commission, in considering the assignment of work, should take into account relevant proposals from the Sub-Commission. In paragraph 8 of the annex to decision 2000/109, the Working Group envisaged a potential rule for the Sub-Commission in standard-setting. Before referring any matter to a working group, the Commission should, where the necessary groundwork has not otherwise been undertaken, consider requesting the Sub-Commission to undertake a study on the question at hand and to prepare a draft text which should include a comprehensive analysis, with substantive comments, of the instrument envisaged.

7. The Sub-Commission, recalling Commission on Human Rights resolutions 1999/81, 1998/28, 1997/22, 1996/25 and other previous resolutions on the work of the Sub-Commission pursuant to which a practice had developed whereby the Chairperson of the Sub-Commission submitted a written report and reported personally to the Commission on significant aspects of the work of the Sub-Commission, decided, without a vote, in the light of this long practice, to request the Chairperson of the Sub-Commission once again to submit a written report and to report personally to the Commission on Human Rights at its fifty-seventh session, with regard to significant aspects of the work of the Sub-Commission (decision 2000/106).

8. In accordance with that request, the Chairperson of the Sub-Commission submits the present concise report to the Commission. Further details regarding the various aspects of the work of the fifty-second session of the Sub-Commission will, if necessary, be provided in her statement to the Commission at its fifty-seventh session. The report of the Sub-Commission on its fifty-second session has been issued as document E/CN.4/2001/2-E/CN.4/Sub.2/2000/46.

I. STATEMENT BY THE CHAIRPERSON OF THE COMMISSION ON HUMAN RIGHTS AT ITS FIFTY-SIXTH SESSION

9. In paragraph 3 of resolution 2000/83, the Commission on Human Rights invited its Chairperson to address the Sub-Commission. Pursuant to this decision, the Sub-Commission invited the Chairperson of the Commission's fifty-sixth session, Mr. Shambhu Ram Simkhada, to take the floor on 31 July 2000.

10. Mr. Shambhu Ram Simkhada, Chairperson of the Commission, reaffirmed the important contribution being made by the Sub-Commission's work in the human rights field. At the same time, while paying tribute to the Sub-Commission's efforts to define its role and improve its methods of work, he reiterated the need to clarify and adjust the Sub-Commission's mandate.

11. The Chairperson referred to decision 2000/109 of 26 April 2000, by which the Commission had decided to approve in its entirety the report of the inter-sessional open-ended Working Group on Enhancing the Effectiveness of the Mechanisms of the Commission. He emphasized that the Commission had endorsed the view that the Sub-Commission had made an important contribution to the work of the Commission thanks to the independence of its members - which was a basic characteristic of the Sub-Commission that guaranteed its credibility.

12. Lastly, he invited the Sub-Commission to discuss situations not being dealt with by the Commission, to examine urgent questions in any country and to concentrate on the preparation of reports and studies. He emphasized the need for a dialogue in greater depth between the Commission and the Sub-Commission, to avoid duplication and misunderstandings between the two bodies, which should pursue their fruitful cooperation with a view to the protection and promotion of human rights.

II. DECISIONS TAKEN BY THE SUB-COMMISSION CONCERNING ITS METHODS OF WORK

13. Pursuant to resolution 2000/83 of the Commission on Human Rights and the observations made on its behalf by its Chairperson, Mr. Shambhu Ram Simkhada, the Sub-Commission devoted a number of meetings to a discussion of its methods of work and ways of informing the Commission of its discussions on the subject of violations of human rights and fundamental freedoms.

14. To this end, on 14 August 2000, the Sub-Commission, with a view to the implementation of Commission decision 2000/109, in particular paragraph 52 of the annex, and in accordance with paragraph 2 of Commission resolution 8 (XXIII) of 16 March 1967, decided, without a vote, to include on an experimental basis in its report an extended and objective overview of its discussions on violations of human rights to be prepared by the Rapporteur of the Sub-Commission and circulated for the consideration of all members before its adoption.

15. During the Sub-Commission's discussions, certain members expressed the view that a report of that nature would not be in conformity with Commission decision 2000/109, since the idea of preparing an annex was not mooted in the Commission's proposal. Others considered that the Sub-Commission was competent to decide upon the structure of its report and could therefore decide to add an annex. According to one member of the Sub-Commission, the Commission itself had taken the view that it would be prejudicial to the cause of human rights if the Sub-Commission was unable to examine the human rights situation in certain countries.

16. The decision was modified by an oral decision of the Sub-Commission on 18 August 2000, at its final meeting at which the report was adopted. The Sub-Commission revised its decision, taking into account the limited time available to agree on the structure of the report and the fact that several members had considered that such a report would not be in conformity with Commission decision 2000/109. The Sub-Commission therefore decided not to submit the report but to request the Commission's advice as to how the Sub-Commission could best inform it of its deliberations on violations of human rights and fundamental freedoms in accordance with paragraph 2 of Commission resolution 8 (XXIII).

17. The Sub-Commission is undertaking this task by carrying out studies as well as through working groups and in the framework of its sessions, and also by the adoption of decisions. Three working groups met before the fifty-second session, namely, the Working Group on Minorities, the Working Group on Indigenous Populations and the Working Group on Contemporary Forms of Slavery. In accordance with Commission decision 2000/109, the Sub-Commission as a whole has ceased to have a role in the 1503 procedure and the Working Group on Communications met after the Sub-Commission's session.

18. In addition to the working groups mentioned above, the Sub-Commission established sessional working groups on the administration of justice and the activities of transnational corporations. In its resolution 2000/5, it proposed the establishment of a pre-sessional working group on the administration of justice.

19. In accordance with the Commission's request, the duration of the Sub-Commission's session was reduced to three weeks. The Sub-Commission held 28 meetings, corresponding to a total of 84 hours of work. The duration of discussions between experts was reduced considerably. The speaking time allotted to non-governmental organizations and government observers was also reduced. The Sub-Commission adopted 27 resolutions and 20 decisions in all. No statement by the Chairperson was adopted.

20. Pursuant to the Commission's request, the Sub-Commission avoided duplication with it. Consequently, it adopted only one resolution concerning violations of human rights and fundamental freedoms entitled "Human rights and humanitarian consequences of sanctions, including embargoes". The Sub-Commission also complied with the Commission's recommendation that it should refrain from adopting thematic resolutions containing references to specific countries.

III. REPORTS, STUDIES AND NEW SUBJECTS

21. In accordance with the conclusions of the Commission's Working Group endorsed by decision 2000/109, the principal attention of the Sub-Commission should be given to the elaboration of studies and research and to providing expert advice at the request of the Commission. The Commission, in considering the assignment of work, should take into account relevant proposals from the Sub-Commission. The Sub-Commission should retain some right of initiative in carrying out research and studies. However, such work at its own initiative should comprise a modest percentage of the Sub-Commission's work and should also take full account of the need to avoid duplication with work being undertaken by other competent bodies.

22. In acting on this recommendation, the Sub-Commission paid special attention to reports and studies. It took note with satisfaction of the working paper on the adverse consequences of economic sanctions. The Sub-Commission expressed its appreciation for the preliminary reports on the concept and practice of affirmative action and on globalization and its impact on the full enjoyment of human rights. The Sub-Commission requested the Special Rapporteurs to continue their studies on those subjects; the Special Rapporteurs on globalization and its impact on the full enjoyment of human rights were requested to include in their report the question of intellectual property rights and human rights. The Special Rapporteur on terrorism and human rights was requested to continue her study. The Sub-Commission also requested the Special Rapporteurs on traditional practices affecting the health of women and the girl child and on the indigenous peoples and their relationship to land to update their working papers. The Sub-Commission appointed a Special Rapporteur on the rights of non-citizens.

23. The Sub-Commission recommended that the Commission should entrust the following subjects to new special rapporteurs: the human rights problems and protections of the Roma; promotion of the realization of the right to drinking water and sanitation; human rights and human responsibilities; and reservations to human rights treaties. It should be noted that the special report on human rights and human responsibilities had been requested by the Commission in its resolution 2000/63.

24. Furthermore, the Sub-Commission entrusted a number of experts with the task of preparing working papers on the following subjects: discrimination based on work and descent;

and promotion and consolidation of democracy. The revision of certain working papers was proposed in the framework of the sessional working group on the working methods and activities of transnational corporations: consequences of the working methods and activities of transnational corporations, the responsibility of States and transnational corporations with regard to the violation of all human rights and standards on the human rights conduct of companies. An expert was entrusted with the task of preparing a working paper on procedures for the implementation of standards on the human rights conduct of companies. In the framework of the working group on the administration of justice, experts were requested to prepare working papers on the following subjects: the domestic implementation in practice of the obligation to provide domestic remedies, administration of justice through military tribunals and other exceptional jurisdictions, and discrimination in the criminal justice system. The Sub-Commission welcomed the practice of the Working Group on Minorities of requesting its members to prepare working papers.

IV. EVALUATION OF THE SUB-COMMISSION'S WORK AT ITS FIFTY-SECOND SESSION

25. At its fifty-second session, the Sub-Commission was required to implement Commission resolution 2000/83. It endeavoured to avoid duplication with the Commission, the analysis of situations being dealt with by the Commission and the adoption of resolutions on specific countries and to concentrate on the preparation of studies and research. Moreover, the Sub-Commission decided to request the Commission for additional clarification about the best way of informing it of its discussions on violations of human rights and fundamental freedoms.

26. It may be emphasized that the Sub-Commission maintained a rational agenda in view of the reduced duration of its session. It continued to accord importance to matters connected with racism, such as the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance by submitting to it two resolutions, one on migrant workers and the other on various problems which should be taken into account by the Conference, namely, slavery and racial discrimination, the impact of economic globalization on the question of racial equality, the treatment of non-citizens, affirmative action, minorities and indigenous peoples. It also took account of the preliminary report on affirmative action.

27. Emphasis was placed on the question of economic, social and cultural rights: a preliminary report on globalization and its impact on the full enjoyment of human rights was submitted by the Special Rapporteurs, and the question of intellectual property rights and human rights, namely, actual or potential conflicts between the implementation by the World Trade Organization of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) and the realization of human rights, was the subject of a Sub-Commission resolution. A detailed study was requested on the promotion of the realization of the right to drinking water and sanitation. One of the most important initiatives concerned the creation of a Social Forum, and the Commission was requested to hold a pre-sessional forum. The Sub-Commission suggested that the Commission should set up a working group to study an optional protocol to the International Covenant on Economic, Social and Cultural Rights. Particular attention should be paid to the rights of women: the mandate of the Special Rapporteur on traditional practices

affecting the health of women and the girl child was extended, and it was proposed that three seminars should be held to evaluate the Plan of Action for the Elimination of Harmful Traditional Practices.

28. Attention should also be drawn to the importance of the work of the inter-sessional working groups (Working Group on Contemporary Forms of Slavery, Working Group on Minorities and Working Group on Indigenous Populations) and the sessional working groups (Working Group on the Working Methods and Activities of Transnational Corporations and Working Group on the Administration of Justice). The larger number of studies, without financial implications, proposed in the framework of these working groups demonstrates the determination of the Sub-Commission's experts to concentrate on research work. The Special Rapporteur on indigenous peoples and their relationship to land was asked to update her working paper. The Sub-Commission noted with appreciation the important working paper on the human rights problems and protections of the Roma and proposed to the Commission a special report on the subject. Three experts of the Sub-Commission participated in a thematic discussion on the same subject organized by the Committee on the Elimination of Racial Discrimination. Greater importance was accorded to questions connected with the administration of justice. In this connection the Sub-Commission adopted a resolution on the role of universal or extraterritorial competence in preventive action against impunity. In view of the key role played by the administration of justice in ensuring respect for human rights, the Sub-Commission proposed to the Commission that the working group on this question should become a pre-sessional working group, meeting for two days.

29. The Sub-Commission embarked upon the process of adjusting and clarifying its mandate, as requested by the Commission. To this end, it adapted its agenda to avoid duplication with the Commission but at the same time continued to analyse human rights situations and concentrated on the preparation of studies and on research work. The Sub-Commission pursued its constructive dialogue with the Commission with a view to the more effective promotion and protection of human rights.